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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 CARLOS MIGUEL WATSON,

13 Defendant.

Case No. CR05-391RSM

ORDER DENYING
DEFENDANT'S MOTION TO
SUPPRESS EVIDENCE

14 This matter comes before the Court on the "Motion to Suppress Evidence
15 Obtained From search Of Defendant's Residence" (Dkt. # 340-1), filed by defendant
16 Carlos Miguel Watson. For the reasons set forth below, the Court denies the motion.

17 **I. Background**

18 On November 17, 2005, Seattle Police Department (SPD) detective Daniel
19 Cockbain, then assigned to the Drug Enforcement Administration (DEA) as a deputized
20 Task Force Officer (TFO), was involved in serving a Court-authorized search warrant at
21 the defendant's residence. This was one of numerous search warrants that were executed
22 as part of this investigation that ultimately led to the indictment of 26 defendants alleged
23 to have been involved in a conspiracy to distribute controlled substances, including
24 marijuana, cocaine, and oxycodone, over a five-year period ending in November 2005.

25 At the defendant's residence, officers found approximately ½ kilogram of cocaine,
26 some of which was being flushed down the toilet by Mr. Watson as the police entered,
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1 along with several firearms, including assault-type weapons and ammunition.

2 Defendant now seeks the exclusion of the abovementioned evidence on Fourth
3 Amendment grounds. He argues that the 117 page affidavit submitted by Detective
4 Cockbain in support of a search warrant, while it certainly contained sufficient probable
5 cause to search other co-defendant's properties, failed to contain probable cause to search
6 his residence. Specifically, defendant argues that, of the more than 400+ Court-
7 authorized wiretap conversations included in the detective's affidavit, only five of those
8 conversations involved him. And, that while those conversations might imply that
9 defendant was "thinking bad thoughts" they also indicate that he simply sought, but never
10 received any drugs from co-defendant Ian Fuhr, the main target of the investigation.
11 Additionally, the defendant argues, Detective Cockbain's affidavit presented to the
12 magistrate judge, contained an intentional and material omission that warrants a hearing
13 pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978). Therefore,
14 defendant contends that the affidavit was lacking in probable cause to believe that any
15 contraband would likely be found at his residence and any evidence seized should be
16 suppressed. The government, for its part, contends that a *Franks* hearing is unnecessary
17 and that the sworn affidavit in support of the search warrant states probable cause to
18 search Watson's residence and even if it did not, the search is still sustainable under the
19 "good faith" exception to the warrant requirement.

20 II. Discussion

21 The Fourth Amendment protects "[t]he right of the people to be secure in their
22 persons, houses, papers, and effects, against unreasonable searches and seizures. . . ."
23 U.S. Const. amend. IV. *Illinois v. Gates*, 462 U.S. 213 (1983) sets forth the standard of
24 review to be applied by judicial officers in reviewing and approving search warrants. The
25 Court held in *Gates* that probable cause is a "practical, non-technical conception." *Id* at
26 232. Furthermore, "[t]he task of the issuing [judicial officer] is simply to make a

1 practical, common sense decision whether, given all of the circumstances set forth in the
2 affidavit . . . there is a fair probability that contraband or evidence of a crime will be
3 found in a particular place.” *Id* at 238. In making this determination, the judicial officer
4 is entitled to draw “reasonable inferences” based upon the information set forth in the
5 affidavit. *Id* at 241. Further, the judicial officer is entitled to “rely on the conclusions of
6 experienced law enforcement officers regarding where evidence of a crime is likely to be
7 found.” *United States v. Fannin*, 817 F.2d 1379, 1382 (9th Cir. 1987). Additionally, as
8 stated by the Ninth Circuit in *United States v. Terry*, 911 F.2d 272, 275 (9th Cir. 1990):

9 A magistrate is permitted to draw reasonable inferences about where
10 evidence is likely to be kept based on the nature of the evidence and the
11 type of offense . . . ‘He need not determine that the evidence sought is *in*
12 *fact* on the premises to be searched . . . or that the evidence is more likely
than not to be found where the search takes place . . . The magistrate need
only conclude that it would be reasonable to seek the evidence in the place
indicated in the affidavit.’

13 Furthermore, once made, the probable cause determination is entitled to “great deference”
14 by reviewing courts. *United States v. Alexander*, 761 F.2d 1294, 1300 (9th Cir. 1985).

15 Analysis

16 1. The Affidavit Establishes Probable Cause to Search Watson’s Residence.

17 With the foregoing principles in mind, the Court turns to the specific facts of this
18 case. To begin, in this case the magistrate judge who authorized the search warrants was
19 presented with a lengthy and thorough affidavit that summarized in great detail the
20 evidence that had been accumulated during the task force investigation. The affidavit
21 discussed a large drug distribution group with alleged gang ties, which had been dealing
22 substantial amounts of drugs over a three-year period of time. The central figure in this
23 group was identified as Ian Fuhr. This investigation went on for years using standard
24 investigative techniques including information provided by confidential sources, law
25 enforcement surveillance, analysis of toll records and multiple controlled buys. The
26 defendant, Carlos Miguel Watson, apparently first came to the attention of law
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1 enforcement after May 31, 2005, when Fuhr was contacted and agreed to deliver cocaine
2 to an informant during a controlled buy. Fuhr was observed by law enforcement officers
3 as he traveled directly to and entered into, the Pro Barber Shop, a business that was co-
4 owned by Watson. Detective Cockbain had previously been given information that “one
5 of the co-owners of the barber shop was involved in cocaine trafficking.” That informant
6 had apparently identified the other co-owner of the barber shop, Alonzo Chatman as the
7 person involved in drug dealing. However, Detective Cockbain had also been told by
8 another confidential source, that Fuhr had “been seen to meet with Watson during this
9 investigation” and there was no apparent evidence that Chatman had ever had any
10 dealings with Fuhr.

11 On August 26, 2005, Detective Cockbain obtained a Court order to begin a wire
12 intercept on the two principal phones used by Fuhr to carry out his drug trafficking
13 schemes. That wire intercept lasted until November 5, 2005. Detective Cockbain’s
14 sworn affidavit at issue in this case included the results of Fuhr’s communications where
15 he arranged drug transactions with several of his coconspirators. Those intercepted
16 communications established that Fuhr delivered drugs in large amounts to multiple drug
17 distributors who then delivered to other customers. The defendant, Carlos Miguel
18 Watson, was intercepted on five separate conversations with Fuhr during the existence of
19 the wire intercept. All of the remaining references to Watson in the search warrant
20 affidavit are drawn from those five calls between Watson and Fuhr.

21 The thrust of the defendant’s argument to suppress is based on his suggested
22 literal reading of the five intercepted conversations wherein it appears that Watson is
23 repeatedly attempting to get Fuhr to deliver drugs to him over that specific ten-week
24 period. Watson argues that there were never any intercepted conversations that show that
25 he, Watson, was ever successful in getting any drugs from Fuhr. Therefore, his argument
26 continues, since there was never any evidence that drugs could be found in his home
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1 there can be no probable cause to search his residence. Watson contends that even
2 looking at the 117 page affidavit in detail, that his name surfaces so infrequently that it's
3 obvious that he was improperly lumped in together with Fuhr's actual drug distributors.

4 As noted by the government, the purpose of the wiretap was to flush out the roles
5 of all of the participants in this drug distribution network, and to identify who was
6 involved and who was not. There were only five recorded phone calls between Watson
7 and Fuhr, assuming that those were the only phones that were used by Fuhr at that time,
8 but those conversations must be read in context as reviewed by the magistrate judge. In
9 other words, the only way to truly understand how Fuhr conducted business, and how
10 Watson was involved, was to read the entire affidavit. This type of review shows
11 conclusively that Fuhr was distributing drugs both long before and during the wiretap.
12 Some of the actual deliveries were intercepted, and on other occasions, only the order for
13 the drugs is intercepted. However, the key point is that Fuhr was obviously involved in a
14 long term effort to deliver substantial quantities of illegal drugs to several other
15 individuals for further distribution down the line. The five conversations involving
16 Watson, show that there was a pre-existing relationship between Fuhr and Watson, that
17 the two of them had done "business" before, and that Watson was consistently trying to
18 get more drugs from Fuhr during the pendency of the wiretap. In the affidavit Detective
19 Cockbain notes for the reviewing magistrate judge his special expertise gleaned from
20 years of experience in narcotics investigations and, in particular, sets out his observations
21 gleaned from his ongoing review of these drug related conversations at issue. In this
22 regard, the Ninth Circuit has repeatedly permitted the Courts to rely upon the factual
23 conclusions of law enforcement officers in sustaining probable cause determinations. See,
24 *United States v. Motz*, 936 F.2d 1021, 1024 (9th Cir. 1991).

25 In this case, a full and complete review of the affidavit of Detective Cockbain
26 shows that Fuhr was in the business of regularly obtaining multiple kilogram quantities of
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1 narcotics and distributing those drugs to others on a routine basis. A common sense
2 reading of the conversations where Watson is intercepted, as well as the reasonable
3 inferences that may be drawn from all of the information in the affidavit as a whole, can
4 only lead to the conclusion that Watson and Fuhr have known each other previously; that
5 Fuhr has repeatedly provided Watson on previous occasions with up to one pound
6 quantities of cocaine “the usual”; that Watson has other people working with him in his
7 drug dealing “my squad”; that they are all waiting on Fuhr to obtain more drugs for
8 them; and that Watson would be the first person he called once Fuhr received the drugs
9 from his suppliers. While Fuhr may have failed to live up to his promise that Watson
10 would be the first person that he contacted once he had more drugs, that in no way
11 detracts from the reasonable conclusion that Watson is involved in the drug trafficking
12 business and in a large scale drug conspiracy with Fuhr. The search warrant affidavit
13 details how, during the last week of the wiretap, additional calls were intercepted
14 indicating that Fuhr was traveling to California to pick up a 10-kilogram supply of
15 cocaine, some of which, based upon the intercepted calls involving Watson, was to go to
16 Watson. The affidavit also indicated that during the last several days of the wiretap,
17 “while Fuhr’s distributors and associates have been waiting for Fuhr to receive an
18 additional large shipment of cocaine, calls indicate they have been maintaining their
19 supply through drugs received from others.” The fact that Watson was waiting to receive
20 his next kilogram of cocaine from Fuhr when the wiretap expired on November 5, and the
21 fact that Fuhr had traveled to California to get it, suggests that it was certainly reasonable
22 to conclude that on November 17, Watson was still involved in the drug business.
23 Moreover, the search warrant did not simply authorize a search for illegal drugs alone, it
24 authorized a search for other items which drug dealers typically maintain, and which this
25 drug trafficking organization was known to maintain, including guns, cash, records of
26 sales and drug trafficking equipment. As the Ninth Circuit stated in *United States v.*

1 *Ocampo*, 937 F.2d 485 (9th Cir. 1991), “we require only a reasonable nexus between the
2 activities supporting probable cause and the locations to be searched.” In this case, given
3 the totality of the circumstances, it was certainly reasonable for the magistrate judge
4 reviewing the affidavit to conclude that probable cause existed and to authorize a search
5 of the defendant’s residence.

6 **2. A Franks Hearing is Unnecessary.**

7 The Ninth Circuit has held that a defendant is entitled to a *Franks* hearing if he can
8 “make a substantial preliminary showing that the affidavit contains deliberate or reckless
9 omissions of facts that tend to mislead, and demonstrate that the affidavit supplemented
10 by the omissions would not be sufficient to support a finding of probable cause.” *United*
11 *States v. Collins*, 61 F.3d 1379, 1384 (9th Cir. 1995). First and foremost, when the
12 affidavit is read in its entirety, Watson cannot point to any statements made by the
13 detective that are not true or that deliberately mislead the magistrate judge. There is no
14 necessity for a *Franks* hearing.

15 **3. The Evidence Would Still Be Admissible Under the “Good faith” Exception.**

16 In *United States v. Leon*, 468 U.S. 897, 926 (1984), the Supreme Court ruled that
17 where law enforcement officers act in “objective, reasonable reliance” on a search
18 warrant issued by a “detached and neutral magistrate” ultimately found to be lacking in
19 probable cause, the evidence seized remains admissible. This is so because it’s only good
20 policy to give preference to the validity of warrants rather than encourage warrantless
21 searches. The operative question then becomes whether a reasonably well-trained officer
22 would have known that the search was illegal despite the magistrate’s authorization.
23 Only if “no reasonably well-trained officer could have believed that there exists probable
24 cause to search” is suppression of the evidence appropriate. *United States v. Tate*, 795
25 F.2d 1487, 1490 (9th Cir. 1988). In the case at bar, there is no evidence whatsoever that
26 Detective Cockbain would have had a reason to doubt the validity of the factual showing
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1 in support of the warrant. There was no effort to mislead the magistrate judge. The
2 conversations were properly summarized, and portions were quoted from the calls
3 themselves. Even if this Court's previous conclusion that the affidavit contained probable
4 cause to search the defendant's home was incorrect, the evidence would still remain
5 admissible under *Leon*.

6 **III. Conclusion**

7 For all of the foregoing reasons, defendant's "Motion to Suppress Evidence" is
8 hereby DENIED.

9 DATED this 8th day of March 2006.

10
11 /s/ Ricardo S. Martinez
12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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